
(2010) 11 AHC CK 0270
In the Allahabad High Court
Case No : Special Appeal No. 706 of 2010

Rajiv Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0270

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Special Appeal has been filed challenging the order of the learned Single Judge dated 6.4.2010.
2. At the threshold, learned Counsel appearing for the Appellant has contended that the judgment of the learned Single Judge of this Court in writ petition No. 18789 of 2003 (Sovendra Singh and Ors. v. State of U.P. and Ors.)along with connected matters, has not been complied with. Admittedly, the appointment was given in 2006. Earlier an order was passed on 4.9.2003, therefore he filed writ petition to get seniority and other financial benefits in service with retrospective effect because of the reason that due to fault of the Respondents appointment was not given to the Petitioner.
3. We have gone through the order impugned and found that the court clearly held that the appointments were given in 2006. Therefore, a person who was not in service on a particular date, cannot be treated in service and seniority cannot be accorded to him. The Petitioner has taken a plea that two persons were given appointments pursuant to the direction of the writ court in 2003 but the petitioner was excluded.
4. We have gone through the record. We found that such persons were not appointed pursuant to the direction of the court as in the earlier writ petition. They were given respective appointments before the disposal of the earlier writ

petition. Therefore, the question of parity as agitated by learned Counsel before us, is misleading in nature.

5. He has relied upon two judgments-one of the Supreme Court and another of the High Court to establish judicial decisions unless otherwise specified are retrospective.

6. So far as Supreme Court judgment is concerned, we find that the employees have been given appointments as daily wagers in the regular vacancy which was construed as Government servants, from the initial appointment. Therefore, the interpretation of the Supreme Court as in judgment reported in 2009(2) SCC 304, General Manager, Uttaranchal Lal Sansthan v. Laxmi Devi and Ors.cannot be applicable in the present case.

7. So far as Division Bench of the High Court is concerned, the reference is Kumari Nisha Srivastava Vs. State of Uttar Pradesh and Others, .

8. Here also the similar questions were considered and held the judgment will be retrospective inter se "parties" to the proceedings. It is prospective for the rest of the world unless otherwise specifically directed. It is held therein that it is well settled that the right of the parties will have to be determined on the basis of the right available to them on the date of the suit. Against these background ultimately court passed an order refusing to disturb appointment of the Respondent No. 5. Accordingly the writ petition was dismissed. Therefore how the discussions made in the judgment is in favour of the Petitioner is not known. Moreso, the date of judgment and the date of seniority are different. The question of seniority will be counted from the date of appointment.

9. In the instant case appointment was given only in 2006. If there is any delay on the part of the State between 2003 and 2006, it was open to proceed before the court of contempt. Why the Petitioner has invoked the jurisdiction of this Court a second time for giving an interpretation with regard to seniority by filing the writ petition is not known. The learned Single Judge has rightly held that since the vacancy was not available earlier to 2006, how the seniority can be given prior thereto. Hence we do not find any infirmity in the order itself.

10. The special appeal is accordingly dismissed, however, without imposing any order as to costs.